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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COLUMBIA PICTURES
INDUSTRIES, INC., *et. al.*

Plaintiffs,

v.

GARY FUNG, *et. al.*

Defendants.

Case No. CV-06-05578 SVW (JCx)

**PLAINTIFFS' SUPPLEMENTAL
RESPONSE IN OPPOSITION TO
DEFENDANTS' *EX PARTE*
APPLICATION TO COMPEL
PLAINTIFFS' RESPONSES TO
DISCOVERY**

Pretrial Conference Date: Oct. 28, 2013

Trial Date: Nov. 5, 2013

1 Last week, Defendants rushed to the Court, moving to compel discovery on a
 2 host of issues about which they had not yet met and conferred with Plaintiffs. *See*
 3 Defs.’ *Ex Parte* Application to Compel Pls.’ Responses to Discovery (ECF No. 615).
 4 Plaintiffs immediately filed a response advising the Court that Defendants had failed
 5 to meet and confer with Plaintiffs and that many of the issues raised by Defendants
 6 could be resolved without Court intervention. (ECF No. 616). Plaintiffs submit this
 7 Supplemental Response in Opposition to Defendants’ *Ex Parte* Application in order
 8 to update the Court about several recent developments that have mooted or narrowed
 9 the discovery issues on which Defendants prematurely moved:

10 1. The Parties Met and Conferred: As Plaintiffs predicted in their earlier
 11 response to Defendants’ *Ex Parte* Application, the issues Defendants raised were
 12 “precisely the sort of issues that discussion among counsel could resolve or narrow.”
 13 Pls. Opp. at 1 (ECF No. 616). At Plaintiffs’ initiative,¹ the parties met and conferred
 14 telephonically on Thursday, September 25, 2013, regarding the discovery at issue in
 15 the *Ex Parte* Application. The parties were able to narrow several issues, and—
 16 subsequent to their meeting—counsel have continued to exchange emails, further
 17 clarifying their positions and narrowing any remaining areas of disagreement. *See*
 18 Exhibit B attached hereto. Defendants have yet to respond to Plaintiffs’ latest
 19 communication regarding these issues. *See id.*

20 2. Plaintiffs’ Additional Productions Have Mooted Certain Requests: As
 21 Plaintiffs advised the Court and Defendants, Plaintiffs intended to make a
 22 “substantial part” of their production to Defendants on September 19, 2013,
 23 followed by further productions “shortly after.” *See* Pls.’ Opp. at 5 n.3 (quoting
 24

25
 26 ¹ The September 25, 2013 email from Gianni P. Servodidio to Defendants’ counsel,
 27 reiterating Plaintiffs’ willingness to meet and confer in order to narrow the issues in
 28 dispute, is attached hereto as Exhibit A.

1 hearing transcript). Plaintiffs have done exactly that. Plaintiffs made supplemental
 2 productions to Defendants on September 24, 25, 26, 27, 29, and 30, 2013. Exhibit C
 3 attached hereto reflects those productions. Plaintiffs have now produced all
 4 copyright registration certificates and chain of title documents for the works for
 5 which they intend to seek statutory damages at the upcoming trial (the “Works-in-
 6 Suit”),² as well as available discovery related to Defendants’ users’ direct
 7 infringements of the Works-in-Suit. This discovery comprises all or a substantial
 8 part of Defendants’ Requests for Production Nos. 96-111 and Interrogatories Nos.
 9 10-16. As a result, Defendants’ *Ex Parte* Application, as filed, is now effectively
 10 moot with respect to these issues.

11 3. The Parties Have Resolved Other Disputes In Part: As Plaintiffs believed
 12 would be the case, the parties have been able to narrow and eliminate certain aspects
 13 of other disputes. For instance:

- 14 • Defendants’ *Ex Parte* Application asked the Court to compel production of
 15 additional information about the Works-in-Suit in order to help Defendants
 16 identify these works. *See* Defs.’ *Ex Parte* App. at 3-4 (requesting, *e.g.*, that
 17 Plaintiffs add “the copyright registration number, the date of registration, and
 18 the name of the copyright registrant” to their Works-in-Suit list). Although
 19 the copyright registrations themselves provide Defendants with the
 20 information they seek, Plaintiffs have provided Defendants with an Exhibit as
 21 part of their filing with the Court on Monday identifying the copyright
 22 registration number for each work in suit upon which they intend to seek
 23 damages under the current schedule. *See, e.g.*, Decl. Francis J. Aul, dated
 24

25
 26 ² Plaintiffs intend to seek statutory damages on 3,947 works. *See* Plfs. Mem of Law
 27 in Supp. of Mot. For Summ. J. On Copyright Ownership, Causation, and Direct
 28 Infringement at 1 & n.1.

1 Sept. 30, 2013, at Ex 1. This agreement resolves, in part, Defendants'
2 contentions regarding Plaintiffs' responses Interrogatory No. 10 and Request
3 No. 95.

- 4 • Based on discussions with Defendants' counsel, Plaintiffs also produced a
5 subset of Defendants' website Server Log Data, which includes only U.S.
6 download events for the dot-torrent files produced by Plaintiffs to date.
7 Plaintiffs have also provided Defendants with a spreadsheet identifying: (i)
8 "exemplar" dot-torrent files associated with Plaintiffs' works; and (ii)
9 associated U.S. download event counts for those dot-torrent files. Although
10 Plaintiffs were under no obligation to parse Defendants' own server log data
11 for them, Plaintiffs agreement to do so to this extent resolves, in part,
12 Defendants' arguments regarding the specificity of Plaintiffs' responses with
13 regard to acts of direct infringement. *See* Defs.' *Ex Parte* App. at 9-12
14 (regarding Interrogatories Nos. 11-15 and Document Requests Nos. 102-11).
15 • Plaintiffs have offered to amend their responses to Interrogatories Nos. 17 and
16 18 in order to address concerns raised by Defendants during the meet and
17 confer. Plaintiffs are awaiting a response from Defendants regarding the
18 same.

19 In light of the foregoing developments, Plaintiffs respectfully request that the
20 Court direct Defendants to complete their meet and confer process with Plaintiffs
21 and revise and re-file their *Ex Parte* Application to: (1) include only those Requests
22 and Interrogatories about which disputes remain; and (2) clarify which arguments
23 are still at issue as to those Requests and Interrogatories. Proceeding in this way will
24 obviate the need to parse through Defendants' now largely outdated *Ex Parte*
25 Application to determine which issues have been resolved in whole or in part and to
26 address any remaining areas of dispute based on an appropriate record.

1 Plaintiffs are prepared to oppose Defendants' re-filed Application following
 2 the provisions set forth in the parties' joint stipulation regarding briefing schedules
 3 for *ex parte* applications and the Court's recent order regarding same. *See* Joint
 4 Stipulation (ECF No. 611).

5 6 CONCLUSION

7 For the foregoing reasons, Plaintiffs respectfully request that the Court deny
 8 Defendants' *Ex Parte* Application to Compel Plaintiffs' Responses to Discovery,
 9 and direct Defendants to complete their meet and confer with Plaintiffs on any
 10 outstanding issues re-file this Application, if necessary, to the extent that disputes
 11 still remain.

12
13 Dated: October 2, 2013

Respectfully submitted,

14 JENNER & BLOCK LLP

15 By: /s/ Gianni P. Servodidio
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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2013, a copy of the foregoing Plaintiffs' Supplemental Response in Opposition to Defendants' *Ex Parte* Application to Compel Plaintiffs' Responses to Discovery was sent electronically to the attorneys listed below. A copy was also hand delivered to Mr. Elkin.

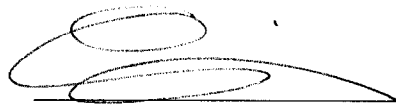
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